



SCANNED  
Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: SEPTEMBER 4, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION  
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ISLER)  
OFFICE OF THE GENERAL COUNSEL (DODSON; CHRISTENSEN)

RE: CANCELLATION BY FLORIDA PUBLIC SERVICE COMMISSION OF CLEC  
CERTIFICATE FOR VIOLATION OF RULES 25-4.0161, F.A.C.,  
REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES,  
AND 25-24.835, F.A.C., RULES INCORPORATED.

AGENDA: 09/16/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION -  
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030616.RCM

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CASE BACKGROUND

This recommendation deals with the enforcement actions against competitive local exchange telecommunications companies (CLECs) for nonpayment of the Regulatory Assessment Fees (RAFs) and not providing the Commission with its updated reporting requirements. Staff is recommending that first time offenders for both rule violations be penalized \$1,000 and the second time offenders of the RAF rule plus reporting requirements violation be penalized \$1,500.

In Issues 1 and 2 of this recommendation, staff identifies Rules 25-4.0161 and 25-24.480, Florida Administrative Code, as those apparently violated by the companies listed in the attachments. Both rules are incorporated by Rule 25-24.835, Florida Administrative Code. To avoid redundancy, hereafter, the recommendation refers only to Rules 25-4.0161 and 25-24.480, Florida Administrative Code.

DOCUMENT NUMBER-DATE

08241 SEP-4 03

COMMISSION CLERK

DOCKET NOS. 030616-TX & OTHERS

DATE: SEPTEMBER 4, 2003

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, 364.337, and 364.183, Florida Statutes. The following docket numbers are addressed by this recommendation.

**1<sup>st</sup> Time Offenders - Nonpayment of RAFs and Reporting Requirements Violation - \$1,000 Penalty**

DOCKET NO. 030616-TX - ADVENT CONSULTING AND TECHNOLOGY, INC.

DOCKET NO. 030617-TX - DIRECT-TEL USA, LLC

DOCKET NO. 030626-TX - SATCOM COMMUNICATION CORPORATION

D/B/A SATCOM COMMUNICATION

DOCKET NO. 030627-TX - QUANTUM PHONE COMMUNICATIONS, L.L.C.

DOCKET NO. 030633-TX - PHANTOM NETWORKS, INC.

DOCKET NO. 030657-TX - R & D NETWORK SERVICES, INC.

DOCKET NO. 030664-TX - BAR-LYN ENTERPRISES INC D/B/A SWIFTPHONE

DOCKET NO. 030673-TX - F.J.M.R. INVESTMENTS, INC. D/B/A

SUNSHINES COMMUNICATIONS NETWORK

**2<sup>nd</sup> Time Offenders - Nonpayment of RAFs (2<sup>nd</sup> Violation) and Reporting Requirements Violation - \$1,500 Penalty**

DOCKET NO. 030615-TX - COMUSA, INC.

DOCKET NO. 030630-TX - NEW CONNECTS, INC.

DATE: SEPTEMBER 4, 2003

1<sup>st</sup> Time Offenders - Nonpayment of RAFs and Reporting Requirements  
Violation - \$1,000 Penalty

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission impose a total penalty of \$1,000 (\$500 for each rule violation) or cancel each company's respective certificate, as listed on Attachment A, for apparent violation of Rules 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, and 25-24.480, Florida Administrative Code, Records & Reports; Rules Incorporated?

RECOMMENDATION: The Commission should impose a total penalty of \$1,000 (\$500 for the RAFs violation and \$500 for the Reporting Requirements violation) or cancel each company's respective certificate, as listed on Attachment A, for apparent violation of Rule 25-4.0161, Florida Administrative Code, if the penalty, Regulatory Assessment Fees, including statutory penalty and interest charges, and the information required by Rule 25-24.480, Florida Administrative Code, are not received by the Commission within fourteen (14) calendar days after the issuance of the Consummating Order. The total penalty of \$1,000 should be paid to the Florida Public Service Commission. If a company does not protest the Commission's Order or the penalty and Regulatory Assessment Fees, including statutory penalty and interest charges, and required information are not received, that company's certificate, as listed on Attachment A, should be cancelled administratively and the collection of the past due fees should be referred to the Florida Department of Financial Services for further collection efforts. If a company's certificate, as listed on Attachment A, is cancelled in accordance with the Commission's Order from this recommendation, the respective company should be required to immediately cease and desist providing competitive local exchange services in Florida. (Isler; Dodson)

STAFF ANALYSIS: Each of the companies listed on Attachment A have not paid their 2002 Regulatory Assessment Fees, plus statutory penalty and interest charges, in compliance with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies.

In addition, each of the companies listed on Attachment A have had returned mail and have not updated the information within 10 days of the change of their respective address (including street

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name and address, post office box, city), telephone number and any change in the name and address of the individual who is serving as primary liaison with the Commission. Staff attempted to call each company, but was unsuccessful. Therefore, it appears the companies listed on Attachment A have failed to comply with Rules 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, and 25-24.480, Florida Administrative Code, Records & Reports; Rules Incorporated, and have not requested cancellation of their respective certificates in compliance with Rule 25-24.820, Florida Administrative Code. The penalty amount recommended in these dockets is consistent with amounts imposed for recent, similar violations. Pursuant to Section 364.336, Florida Statutes, cancellation of an entity's certificate does not relieve the obligation to pay RAFs, including statutory penalty and interest charges, if the certificate was active during any portion of the calendar year, including the year of cancellation.

Accordingly, staff recommends that the Commission assess a total penalty of \$1,000 (\$500 for the RAFs violation and \$500 for the Reporting Requirements violation) or cancel each company's respective certificate, as listed on Attachment A, for apparent violation of Rule 25-4.0161, Florida Administrative Code, if the penalty, Regulatory Assessment Fees, including statutory penalty and interest charges, and the information required by Rule 25-24.480, Florida Administrative Code, are not received by the Commission within fourteen (14) calendar days after the issuance of the Consummating Order. The total penalty of \$1,000 should be paid to the Florida Public Service Commission. If a company does not protest the Commission's Order or the penalty and Regulatory Assessment Fees, including statutory penalty and interest charges, and required information are not received, that company's certificate, as listed on Attachment A, should be cancelled administratively and the collection of the past due fees should be referred to the Florida Department of Financial Services for further collection efforts. If a company's certificate, as listed on Attachment A, is cancelled in accordance with the Commission's Order from this recommendation, the respective company should be required to immediately cease and desist providing competitive local exchange services in Florida.

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2nd Time Offenders - Nonpayment of RAFs (2nd Violation) and Reporting Requirements Violation - \$1,500 Penalty

ISSUE 2: Should the Commission impose a total penalty of \$1,500 (\$1,000 for RAFs violation and \$500 for reporting requirements violation) or cancel each company's respective certificate, as listed on Attachment B, for apparent violation of Rules 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies, and 25-24.480, Florida Administrative Code, Records & Reports; Rules Incorporated?

RECOMMENDATION: The Commission should impose a total penalty of \$1,500 (\$1,000 for RAFs violation and \$500 for reporting requirements violation) or cancel each company's respective certificate, as listed on Attachment B, for apparent violation of Rule 25-4.0161, Florida Administrative Code, if the penalty, Regulatory Assessment Fees, including statutory penalty and interest charges, and the information required by Rule 25-24.480, Florida Administrative Code, are not received by the Commission within fourteen (14) calendar days after the issuance of the Consummating Order. The total penalty of \$1,500 should be paid to the Florida Public Service Commission. If a company does not protest the Commission's Order or the penalty and Regulatory Assessment Fees, including statutory penalty and interest charges, and required information are not received, that company's certificate, as listed on Attachment B, should be cancelled administratively and the collection of the past due fees should be referred to the Florida Department of Financial Services for further collection efforts. If a company's certificate, as listed on Attachment B, is cancelled in accordance with the Commission's Order from this recommendation, the respective company should be required to immediately cease and desist providing competitive local exchange services in Florida. (Isler; Christensen)

STAFF ANALYSIS: Each of the companies listed on Attachment B have not paid their 2002 Regulatory Assessment Fees, plus statutory penalty and interest charges. This is the second docket opened against each company for nonpayment of the RAF. In each of the prior dockets, the companies listed on Attachment B proposed settlements to resolve the dockets. Therefore, it appears the companies have failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies.

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In addition, each of the companies listed on Attachment B have had returned mail and have not updated the information within 10 days of the change of their respective address (including street name and address, post office box, city), telephone number and any change in the name and address of the individual who is serving as primary liaison with the Commission. Staff attempted to call each company, but was unsuccessful. Therefore, it appears the companies listed on Attachment B have failed to comply with Rule 25-24.480, Florida Administrative Code, Records & Reports; Rules Incorporated, and have not requested cancellation of their respective certificates in compliance with Rule 25-24.820, Florida Administrative Code. The penalty amount recommended in these dockets is consistent with amounts imposed for recent, similar violations. Pursuant to Section 364.336, Florida Statutes, cancellation of an entity's certificate does not relieve the obligation to pay RAFs, including statutory penalty and interest charges, if the certificate was active during any portion of the calendar year, including the year of cancellation.

Accordingly, staff recommends that the Commission assess a total penalty of \$1,500 (\$1,000 for RAFs violation and \$500 for reporting requirements violation) or cancel each company's respective certificate, as listed on Attachment B, for apparent violation of Rule 25-4.0161, Florida Administrative Code, if the penalty, Regulatory Assessment Fees, including statutory penalty and interest charges, and the information required by Rule 25-24.480, Florida Administrative Code, are not received by the Commission within fourteen (14) calendar days after the issuance of the Consummating Order. The total penalty of \$1,500 should be paid to the Florida Public Service Commission. If a company does not protest the Commission's Order or the penalty and Regulatory Assessment Fees, including statutory penalty and interest charges, and required information are not received, that company's certificate, as listed on Attachment B, should be cancelled administratively and the collection of the past due fees should be referred to the Florida Department of Financial Services for further collection efforts. If a company's certificate, as listed on Attachment B, is cancelled in accordance with the Commission's Order from this recommendation, the respective company should be required to immediately cease and desist providing competitive local exchange services in Florida.

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ISSUE 3: Should these dockets be closed?

RECOMMENDATION: The Orders issued from these recommendations will become final upon issuance of Consummating Orders, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Orders. The dockets should then be closed upon receipt of the penalties, fees, and required information or cancellation of each company's respective certificate. A protest in one docket should not prevent the action in a separate docket from becoming final. (Dodson; Christensen)

STAFF ANALYSIS: Whether staff's recommendations on Issues 1 and 2 are approved or denied, the result will be Proposed Agency Action Orders. If no timely protest to the Proposed Agency Actions are filed within 21 days of the date of issuance of the Orders, these dockets should be closed upon receipt of the penalties, fees, and required information or cancellation of each company's respective certificate. A protest in one docket should not prevent the action in a separate docket from becoming final.

1<sup>st</sup> Time Offenders - Nonpayment of RAFs and Reporting Requirements Violation - \$1,000 Penalty

<u>Docket No.</u>	<u>Provider Last Reported Revenues &amp; Period Ended</u>	<u>Cert. No.</u>	<u>RAFs</u>	<u>Penalty and Interest*</u>
030616-TX	Advent Consulting and Technology, Inc. \$0 Revenues 12/31/01	5237	2002	1998 2000 2002
030617-TX	Direct-Tel USA, LLC \$247,871 Revenues 12/31/01	5316	2002	2001 2002
030626-TX	SATCOM Communication Corporation d/b/a SATCOM Communication \$25,744 Revenues 12/31/01	7469	2002	2002
030627-TX	Quantum Phone Communications, L.L.C. \$0 Revenues 12/31/01	7535	2002	2000 2001 2002
030633-TX	Phantom Networks, Inc. \$0 Revenues 12/31/01	7854	2002	2001 2002
030657-TX	R & D Network Services, Inc. \$0 Revenues 12/31/01	7913	2002	2002
030664-TX	Bar-Lyn Enterprises Inc. d/b/a Swiftphone No Previous Return Filed	7794	2002	2002
030673-TX	F.J.M.R. Investments, Inc. d/b/a Sunshines Communications Network No Previous Return Filed	8246	2002	2002

\*Years penalty and/or interest was not paid



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ATTACHMENT B

2<sup>nd</sup> Time Offender - Nonpayment of RAFs and Reporting Requirements Violation - \$1,500 Penalty

<u>Docket No.</u>	<u>Provider</u> <u>Last Reported Revenues &amp;</u> <u>Period Ended</u>	<u>Cert.</u> <u>No.</u>	<u>RAFs</u>	<u>Penalty</u> <u>and</u> <u>Interest*</u>
030615-TX	COMUSA, Inc. \$0 Revenues 12/31/01	4871	2002	1997 2001 2002
030630-TX	New Connects, Inc. \$0 Revenues 12/31/01	7841	2002	2002

\*Years penalty and/or interest was not paid